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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,594	05/15/2006	Stephen William Sankey	DTG1-126US	1832
31344	7590	05/11/2011	EXAMINER	
RATNERPRESTIA			WATKINS III, WILLIAM P	
P.O. BOX 1596			ART UNIT	
WILMINGTON, DE 19899			PAPER NUMBER	
			1783	
			MAIL DATE	
			DELIVERY MODE	
			05/11/2011	
			PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/564,594	Applicant(s) SANKEY ET AL.	
	Examiner William P. Watkins III	Art Unit 1783	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) 21-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 30-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/14/2011; 12/02/2010</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The rejection using Kyou et al. (JP-U 04041873) given in section 4 of the office action mailed 14 October 2010 is withdrawn in view of the certified translation of the reference supplied by applicant, which states that the film (element 13) is porous and not perforated. The "means for venting" in claim 1 is only supported in the specification by the structures of incisions and perforations. A porous film is not necessarily perforated. The art rejection using Lin has been modified below in response to applicant's new claim language.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (WO 01/92000 A1)) in view of Dyke (U.S. 4,515,841) further in view of Schmal et al. (U.S. 6,682,792).

Lin teaches a heat sealable packaging film that can have a polyester substrate with venting holes and a sealing layer over the entire surface of the film that covers the vent holes. The sealing layer melts in response to heat and pressure from micro wave cooking or sterilization (abstract, Figure 4, page 5, lines 10-25, page 14, lines 5-20,

page 15, lines 20-30). Though Lin teaches starch as an ingredient of the sealing layer (page 11, line 11), the reference fails to explicitly teach use of a water soluble sealing layer. Dyke teaches the use of either a polymer that softens when it is heated or a water soluble polymer such as polyvinyl alcohol that absorbs steam and expands and dissolves to form an opening when a water containing substance is heated in a package (abstract). Schmal et al. teaches the use of biaxially oriented films for food and cooking bags in order to have tougher films (col. 10, lines 5-30). The instant invention claims a water soluble barrier layer over an opening in a thermal sealed package with a vent hole that is covered by a barrier of a water soluble material that extends across the entire surface of the substrate film with the vent opening. The instant invention further claims the substrate film as being biaxially oriented. It would have been obvious to one of ordinary skill in the art to have used a water soluble instead of a heat sensitive barrier layer in Lin because Dyke teaches these as alternate substitutes in the bag venting art when the contents of the package or the environment in which it is processed contain water. It further would have been obvious to have used a biaxially oriented film as the substrate film of Lin in view of Dyke in order to increase the toughness of the film because of the teachings of Schmal et al. Variation in the thickness of the soluble layer and variation in the selection of bag substrate and soluble barrier materials is taken as being within the ordinary skill of the art depending on the strength of the seal desired and the desired opening temperatures and pressures, absent unexpected results.

4. Applicant's arguments with respect to claims 1-20 and 30-33 filed 14 January 2011 have been considered but have not been found to be persuasive.

Applicant argues that Lin teaches that the barrier layer must be water resistant and that it must be re-sealable. Though these features are taught in the reference, the examiner disagrees that these are essential elements of the invention of Lin. The essential function of Lin is that the sealing film and substrate vent when exposed to steam during cooking. Lin specifies the use of starch, fatty acids, and surfactants as possible components of a seal layer. Though not explicitly taught as being water soluble, all of the materials would be known to one of ordinary skill in the art as not always being water insoluble. Therefore one of ordinary skill in the art would construct water resistance as an optional feature of the reference. Whether a seal layer needs to be reusable or not depends on the economics of the particular application and also would have clearly been an optional feature to one of ordinary skill in the art. As an alternate argument, the abstract of EP '809 of record in the case teaches the use of water soluble films as films that can be resealed and as films that can seal a package for dried goods. Thus simply because the barrier layer of the combination of the references may be soluble does not preclude it protecting dried goods or from being able to be resealed.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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May 10, 2011

/William P. Watkins III/
Primary Examiner, Art Unit 1794